United States Court of Appeals

for the Second Circuit

REPLY BRIEF

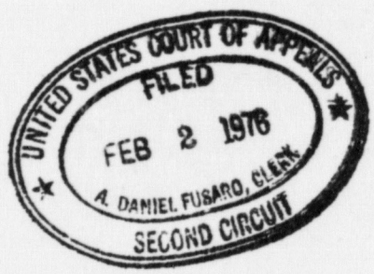
75-7507

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT CUTMORE. : Docket No.75-7507
Appellant

vs.

PLAZA INVESTORS HOLMDEL
CORPORATION AND HAROLD
LEWIS. Appellees : January 29, 1976



3

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ROBERT CUTMORE, Plaintiff-Appellant vs. PLAZA INVESTORS HOLMDEL CORPORATION AND HAROLD LEWIS Defendant-Appellees	)	Docket No. 75-7507 January 29, 1976

APPEAL FROM DISTRICT COURT

REPLY BRIEF OF APPELLANT

VICTOR M. FERRANTE
Attorney for Appellant
285 Golden Hill Street
Bridgeport, Connecticut
06604

TABLE OF CONTENTS

INDEX TO CITATIONS

STATUTES CITED

STATEMENT OF ISSUE

I. NO CONNECTICUT AUTHORITY EXISTS TO SUPPORT THE PIERCING OF THE CORPORATE VEIL IN THESE CIRCUMSTANCES.

ARGUMENT

I. NO CONNECTICUT AUTHORITY EXISTS TO SUPPORT THE PIERCING OF THE CORPORATE VEIL IN THESE CIRCUMSTANCES.

The Appellee landowner has not cited any cases under the Connecticut Workmen's Compensation Act to support the piercing of the corporate veil in a situation where the employee is attempting to collect from the landowner for not providing safe premises. The only Connecticut case cited which is at all relevant is one we cited in our own brief, ZAIST v OLSON, 154 Conn. 561.

In that case the individual Olson caused the creation of various corporate entities among which was East Haven Homes, Inc. Olson owned all stock of East Haven effectively and was its principal officer. Olson owned land individually which he deeded to another corporation controlled by him. East Haven became the general contractor to build shopping centers on the land and on other land owned or controlled through other corporate entities by Olson. East Haven through Olson contracted with Zaist, et al to perform services in the building of these shopping centers. Zaist, et al were owed money by East Haven Homes and sued Olson individually to get it.

The court found against Olson individually,

because he totally controlled the corporation, and because that control was used "to perpetrate an unjust act in contravention of the plaintifs' rights;" ZAIST v OLSON, 154 Conn. 563, 578.

The landowner appellee also cited SEGAN CONSTRUCTION CORP. v NOR-WEST BUILDERS, INC., 274 F. Supp. 691, a Connecticut United States District Court decision rendered by the District Court Judge Timbers which follows the ZAIST v OLSON rationale. Thereto, the court permitted the plaintiffs' recovery of the corporate debt against the individual who had formed and controlled the corporation. Judge Timbers found:

> "...The corporation was simply a form to be used by Cooper for his individual advantage in an attempt to avoid essentially all risk by raising the shield of limited liability through creation of an inadequately capitalized company. In such circumstances, personal liability may not be evaded." SEGAN CONSTRUCTION CORP. v. NOR-WEST BUILDERS, INC., 274 F. Supp. 691, 699.

In both these cases the court essentially found that the under-capitalized corporation created by the individuals were being used to defraud creditors; and it was to permit creditors to recover that the corporate veil was pierced. Such holdings are not authority for piercing the corporate veil in the instant case.

Rather, the leading Connecticut case on the

corporate veil under Connecticut Workmen's Compensation Law is DOE v SARACYN CORPORATION, 138 Conn. 69 (1951). In that case, the same defense was raised by the landlord as was raised here, the principal employer statute, now Conn. Gen. Statutes Sec. 31-291.

The owner of the land, STERLING, created SARACYN CORPORATION, furnished its capital but gave all its stock to his father-in-law PARKS. PARKS ran the corporation from 1942 to 1946 to produce chemical products for STERLING at no profit to the corporation. STERLING leased the premises to the corporation. PARKS became incapacitated in 1946.

Thereafter, STERLING took over the manufacture of the chemical products. He hired employees and paid them out of his individual pocket. He also paid withholding and social security out of his individual pocket.

One of STERLING'S employees suffered arsenic poisoning, because of the chemicals which had seeped into the water supply. That employee DOE had become a tenant in an apartment on the premises, a tenant of SARACYN which controlled the premises by virtue of its lease from STERLING. No rent was paid to SARACYN, but the rent consisted of eight (8) hours extra work per week for STERLING, the employer. DOE sued SARACYN and STERLING. However STERLING was dropped from the suit. Nonetheless the

SARACYN CORPORATION claimed that it was immune from liability on the basis of the principal employer statute, because STERLING controlled SARACYN CORPORATION, and STERLING was the employer; therefore STERLING'S defense as the principal employer would inhere to the benefit of his totally controlled corporation which was being sued as the landlord of the premises. The defense claim, according to the court at page 78 of Volume 138, was that "the plaintiff would be an employee of merged identities."

The court held that the corporate fiction could not be disregarded under those circumstances. The court permitted recovery by the plaintiff employee against the landlord corporation despite the fact that the plaintiff was an employee of the individual, the controller of the corporation, and as to STERLING, the employer defense against negligence liability was valid.

DOE v SARACYN then is the controlling Connecticut case on piercing the corporate veil where a Workmen's Compensation Law defense is raised. ZAIST v OLSON and SEGAN CONSTRUCTION CORP. v NOR-WEST BUILDERS, INC. are not really in point. In those two cases, the corporate veil was pierced to impose liability in favor of creditors unjustly treated by virtue of the corporate fiction.

But in DOE, the court did not permit the piercing

of the corporate veil to deny liability to a third party. No evidence was adduced in DOE to permit the court to disregard the corporate fiction. Similarly here, there is no evidence that INVESTORS, the building contracting corporation was undercapitalized or was employing some other device to defraud creditors or more relevantly, to deny Workmen's Compensation Law protection to employees of sub-contractors.

CONCLUSION

Since there was no evidence that the corporate fiction was used for a fraudulent, unjust or inequitable purpose, there is no need here to set it aside in favor of its creator. Rather the rule in DOE v SARACYN is the prevailing one. The defense of the general contractor corporation INVESTORS cannot be used by the individual landowner to escape liability.

Respectfully submitted,

Victor M. Ferrante

VICTOR M. FERRANTE
Attorney for Appellant

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ROBERT CUTMORE,	)	Docket No. 75-7507
	)	
Plaintiff-Appellant	)	
	)	
vs.	)	
	)	
PLAZA INVESTORS HOLMDEL CORPORATION AND HAROLD LEWIS	)	
	)	
	)	
Defendant-Appellees	)	January 29, 1976

CERTIFICATION

This is to certify that two (2) copies of the Reply Brief of Appellant in the above-captioned matter have today been mailed, postage prepaid, to David J. Sullivan, Esq., counsel for the Appellees, at his office at Willis and Willis, 955 Main Street, Bridgeport, Connecticut, 06604.

VICTOR M. FERRANTE
Counsel for Appellant
285 Golden Hill Street
Bridgeport, Connecticut 06604